

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FIRE INNOVATIONS, LLC,
Plaintiff(s),

V.

RIT RESCUE & ESCAPE SYSTEMS,
INC.,
Defendant(s).

No. C09-1703 BZ

**ORDER SCHEDULING
JURY TRIAL AND
PRETRIAL MATTERS**

Following a Status Conference, **IT IS HEREBY ORDERED** that:

1. DATES

Trial Date: **Monday, 2/7/2011, 10 days**

2. DISCLOSURE AND DISCOVERY

The parties are reminded that a failure to voluntarily disclose information pursuant to Federal Rule of Civil Procedure 26(a) or to supplement disclosures or discovery responses pursuant to Rule 26(e) may result in exclusionary sanctions. Thirty days prior to the close of non-expert discovery, lead counsel for each party shall serve and file a

1 certification that all supplementation has been completed.

2 In the event a discovery dispute arises, **lead counsel** for
3 each party shall meet in person or, if counsel are outside the
4 Bay Area, by telephone and make a good faith effort to resolve
5 their dispute. Exchanging letters or telephone messages about
6 the dispute is insufficient. The Court does not read
7 subsequent positioning letters; parties shall instead make a
8 contemporaneous record of their meeting using a tape recorder
9 or a court reporter.

10 In the event they cannot resolve their dispute, the
11 parties must participate in a telephone conference with the
12 Court **before** filing any discovery motions or other papers.
13 The party seeking discovery shall request a conference in a
14 letter filed electronically not exceeding two pages (with no
15 attachments) which briefly explains the nature of the action
16 and the issues in dispute. Other parties shall reply in
17 similar fashion within two days of receiving the letter
18 requesting the conference. The Court will contact the parties
19 to schedule the conference.

20 3. MOTIONS

21 Consult Civil Local Rules 7-1 through 7-5 and this
22 Court's standing orders regarding motion practice. Motions
23 for **summary judgment** shall be accompanied by a statement of
24 the material facts not in dispute supported by citations to
25 admissible evidence. The parties shall file a joint statement
26 of undisputed facts where possible. If the parties are unable
27 to reach complete agreement after meeting and conferring, they
28 shall file a joint statement of the undisputed facts about

1 which they do agree. Any party may then file a separate
2 statement of the additional facts that the party contends are
3 undisputed. A party who without substantial justification
4 contends that a fact is in dispute is subject to sanctions.

5 A Chambers copy of all briefs shall be e-mailed in
6 WordPerfect or Word format to the following address:
7 bzpo@cand.uscourts.gov.

8 4. SETTLEMENT

9 This case is referred for assignment to a Magistrate
10 Judge to conduct a settlement conference in **JUNE OR JULY of**
11 **2010**. Counsel will be contacted by that judge's chambers with
12 a date and time for the conference.

13 5. PRETRIAL CONFERENCE

14 Not less than thirty days prior to the date of the
15 pretrial conference, the parties shall meet and take all steps
16 necessary to fulfill the requirements of this Order.

17 Not less than twenty-one days prior to the pretrial
18 conference, the parties shall: (1) serve and file a joint
19 pretrial statement, containing the information listed in
20 **Attachment 1**, and a proposed pretrial order; (2) serve and
21 file trial briefs, Daubert motions, motions *in limine*, and
22 statements designating excerpts from discovery that will be
23 offered at trial (specifying the witness and page and line
24 references); (3) exchange exhibits, agree on and number a
25 joint set of exhibits and number separately those exhibits to
26 which the parties cannot agree; (4) deliver all marked trial
27 exhibits directly to the courtroom clerk, Ms. Yiu; (5) deliver
28 one extra set of all marked exhibits directly to Chambers; and

(6) submit all exhibits in three-ring binders. Each exhibit shall be marked with an exhibit label as contained in **Attachment 2**. The exhibits shall also be separated with correctly marked side tabs so that they are easy to find.

No party shall be permitted to call any witness or offer any exhibit in its case in chief that is not disclosed at pretrial, without leave of Court and for good cause.

Lead trial counsel for each party shall meet and confer in an effort to resolve all disputes regarding anticipated testimony, witnesses and exhibits. All Daubert motions, motions *in limine*, and objections will be heard at the pretrial conference. Not less than eleven days prior to the pretrial conference, the parties shall serve and file any objections to witnesses or exhibits or to the qualifications of an expert witness. Oppositions shall be filed and served not less than eleven days prior to the conference. There shall be no replies.

Not less than twenty-one days prior to the pretrial conference the parties shall serve and file requested voir dire questions, jury instructions, and forms of verdict. The following jury instructions from the *Manual of Model Civil Jury Instructions for the Ninth Circuit* (2007 ed.) will be given absent objection: 1.1C, 1.2, 1.6-1.14, 1.18, 1.19, 2.11, 3.1-3.3. Do not submit a copy of these instructions. Counsel shall submit a joint set of case specific instructions. Any instructions on which the parties cannot agree may be submitted separately. The Ninth Circuit Manual should be used where possible. Each requested instruction shall be typed in

1 full on a separate page with citations to the authority upon
2 which it is based. Proposed jury instructions taken from the
3 Ninth Circuit Manual need only contain a citation to that
4 source. Any modifications made to proposed instructions taken
5 from a manual of model instructions must be clearly indicated.
6 In addition, all proposed jury instructions should conform to
7 the format of the Example Jury Instruction attached to this
8 Order. Not less than eleven days prior to the pretrial
9 conference, the parties shall serve and file any objections to
10 separately proposed jury instructions.

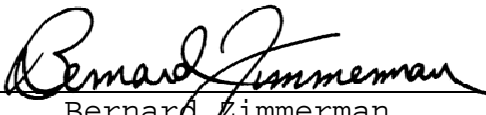
11 Jury instructions that the Court has given in prior cases
12 may be downloaded from the Northern District website at
13 **<http://www.cand.uscourts.gov>**. (Instructions are located on
14 the "Judge Information" page for Magistrate Judge Zimmerman).
15 The Court will generally give the same instructions in cases
16 involving similar claims unless a party establishes, with
17 supporting authorities, that the instruction is no longer
18 correct or that a different instruction should be given. CACI
19 instructions generally will be given instead of BAJI
20 instructions.

21 A copy of all pretrial submissions, except for exhibits,
22 shall be e-mailed in WordPerfect or Word format to the
23 following address: bzpo@cand.uscourts.gov

24 At the time of filing the original with the Clerk's
25 Office, two copies of all documents (but only one copy of the
26 exhibits) shall be delivered directly to Chambers (Room 15-
27 6688). Chambers' copies of all pretrial documents shall be
28 three-hole punched at the side, suitable for insertion into

1 standard, three-ring binders.

2 Dated: January 5, 2010

3 
4 Bernard Zimmerman
United States Magistrate Judge

5 G:\BZALL\BZCASES\FIRE INNOVATIONS V. RIT RESCUE\PRETRIAL ORDER.wpd

EXAMPLE PROPOSED JURY INSTRUCTION
For Chambers of Magistrate Judge Zimmerman

A proposed jury instruction should contain the following elements in the following order: (1) the name of the party submitting the instruction; (2) the title of the instruction; (3) the text of the instruction; (4) the authority for the instruction; (5) blank boxes for the Court to note whether it gives the instruction, refuses to give it, or gives it as modified. The following proposed instruction contains these elements.

_____ 's Proposed Instruction No. _____.
(Party)

[Title]

[Text]

[Authority]

_____ GIVEN _____ REFUSED _____ GIVEN AS MODIFIED

ATTACHMENT 1

The parties shall file a joint pretrial conference statement containing the following information:

(1) The Action.

(A) Substance of the Action. A brief description of the substance of claims and defenses which remain to be decided.

(B) Relief Prayed. A detailed statement of each party's position on the relief claimed, particularly itemizing all elements of damages claimed as well as witnesses, documents or other evidentiary material to be presented concerning the amount of those damages.

(2) The Factual Basis of the Action.

(A) Undisputed Facts. A plain and concise statement of all relevant facts not reasonably disputable, as well as which facts parties will stipulate for incorporation into the trial record without the necessity of supporting testimony or exhibits.

(B) Disputed Factual Issues. A plain and concise statement of all disputed factual issues which remain to be decided.

(C) Agreed Statement. A statement assessing whether all or part of the action may be presented upon an agreed statement of facts.

(D) Stipulations. A statement of stipulations requested or proposed for pretrial or trial purposes.

(3) Trial Preparation.

A brief description of the efforts the parties have

made to resolve disputes over anticipated testimony, exhibits and witnesses.

(A) Witnesses to be Called. In lieu of FRCP 26(a)(3)(A), a list of all witnesses likely to be called at trial, other than solely for impeachment or rebuttal, together with a brief statement following each name describing the substance of the testimony to be given.

(B) Estimate of Trial Time. An estimate of the number of court days needed for the presentation of each party's case, indicating possible reductions in time through proposed stipulations, agreed statements of facts, or expedited means of presenting testimony and exhibits.

(C) Use of Discovery Responses. In lieu of FRCP 26(a)(3)(B), cite possible presentation at trial of evidence, other than solely for impeachment or rebuttal, through use of excerpts from depositions, from interrogatory answers, or from responses to requests for admission. Counsel shall state any objections to use of these materials and that counsel has conferred respecting such objections.

(D) Further Discovery or Motions. A statement of all remaining motions, including Daubert motions.

(4) Trial Alternatives and Options.

(A) Settlement Discussion. A statement summarizing the status of settlement negotiations and indicating whether further negotiations are likely to be productive.

1 (B) Amendments, Dismissals. A
2 statement of requested or
3 proposed amendments to
pleadings or dismissals of
parties, claims or defenses.

4 (C) Bifurcation, Separate Trial of
5 Issues. A statement of whether
6 bifurcation or a separate
trial of specific issues is
feasible and desired.

7 (5) **Miscellaneous.**

8 Any other subjects relevant to the trial of the action,
9 or material to its just, speedy and inexpensive
determination.

ATTACHMENT 2

USDC
Case No. CV08-04196 BZ
JOINT Exhibit No. _____

Date Entered _____

Signature _____

USDC
Case No. CV08-04196 BZ
JOINT Exhibit No. _____

Date Entered _____

Signature _____

USDC
Case No. CV08-04196 BZ
PLNTF Exhibit No. _____

Date Entered _____

Signature _____

USDC
Case No. CV08-04196 BZ
PLNTF Exhibit No. _____

Date Entered _____

Signature _____

USDC
Case No. CV08-04196 BZ
DEFT Exhibit No. _____

Date Entered _____

Signature _____

USDC
Case No. CV08-04196 BZ
DEFT Exhibit No. _____

Date Entered _____

Signature _____

USDC
Case No. CV08-04196 BZ
JOINT Exhibit No. _____

Date Entered _____

Signature _____

USDC
Case No. CV08-04196 BZ
JOINT Exhibit No. _____

Date Entered _____

Signature _____

USDC
Case No. CV08-04196 BZ
PLNTF Exhibit No. _____

Date Entered _____

Signature _____

USDC
Case No. CV08-04196 BZ
PLNTF Exhibit No. _____

Date Entered _____

Signature _____

USDC
Case No. CV08-04196 BZ
DEFT Exhibit No. _____

Date Entered _____

Signature _____

USDC
Case No. CV08-04196 BZ
DEFT Exhibit No. _____

Date Entered _____

Signature _____